IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	Case No. 02-45210-DML
INTERLINK HOME HEALTH	§	Chapter 11
CARE, INC., Debtor	§	

INTREPID OF TEXAS, INC. ET AL,	§	
Plaintiffs,	§	
	§	
v.	§	Adversary No. 02-4200
	§	
AMERICARE MANAGEMENT, INC.,	§	
ET AL.,	§	
Defendants.	§	

AMERICARE MANAGEMENT, INC.,	§	
ET AL.,	§	
Plaintiffs,	§	
	§	
v.	§	Adversary No. 02-4196
	§	
INTREPID OF TEXAS, INC., ET AL,	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Before the court is Gary Humberson's ("Humberson") Motion for New Trial and Brief in Support Thereof (the "Motion"). The Motion seeks a new trial in the above-captioned adversary proceedings pursuant to Fed. R. Bankr. P.9023, incorporating Fed. R. Civ. P. 59(e). These matters were previously tried to this court on November 20, 2002, and, after weighing the evidence and arguments presented, the court entered its Final Judgment (the "Judgment") and Findings of Fact and Conclusions of Law (the "Findings").

I. Discussion

These adversary proceedings, and the Motion, center on the authority of Intrepid of Texas, Inc. ("Intrepid") to act through the pledge by Humberson of his stock (the "Stock") in Interlink Home Health Care, Inc. ("Interlink") to change Interlink's board of directors and officers. The facts underlying the disputes are fully stated in the Findings (signed and entered November 20, 2002).[1]

The Motion asserts that the Judgment and Findings do not take proper account of ¶ 6.1 of the pledge agreement. That provision states, in relevant part:

> If an Event of Default shall have occurred and be continuing, [Intrepid] shall have all of the rights and remedies of a secured party under the Code and such other rights or remedies as may be available hereunder, under other applicable law or pursuant to contract. [Humberson] agree[s] that any notice of [Intrepid] of the sale or disposition of the Collateral or any other intended action hereunder, whether required by the Code or otherwise, shall constitute reasonable notice to [Humberson] if the notice is mailed to [Humberson] by regular and certified mail, postage prepaid, at least ten (10) days before the action is taken. During such ten (10) day period, [Humberson] shall have the right to cure any defaults by paying [Intrepid] the amount of the Secured Obligations and any other obligations secured hereby . . . .

In particular, Humberson contends that ¶ 6.1 required Intrepid to provide ten days' notice to Humberson and/or Americare before voting the Stock, something Intrepid did not do.[2] This argument is without merit.

For purposes of the pledge agreement, determining whether an "Event of Default" exists requires reference first to the loan agreement to which the pledge agreement was appended and then back again to the pledge agreement. The loan agreement includes as an event of default a breach by Humberson of any of his representations, warranties or covenants contained in the loan agreement or any loan document (including the pledge agreement). Pursuant to ¶ 4.3 of the

---

1 *See also In re* Interlink, 283 B.R. 429 (Bankr. N.D. Tex 2002)

2 In fact, the court found that Intrepid gave no notice to Humberson before voting the Stock. Findings, ¶12.

pledge agreement, Humberson covenanted not to "assign, deliver, sell, transfer, lease or otherwise dispose of . . . any portion of the Collateral [including the Stock], or any interest therein, without the prior written consent of [Intrepid]." Thus, Humberson's sale of the Stock to Americare constituted a breach of Humberson's covenant in ¶ 4.3, and, thereby, an event of default for purposes of the pledge agreement.

Humberson's argument that Intrepid was required to provide ten day's notice before exercising its right to vote the stock fails for at least three reasons. First, Humberson overlooks the language of ¶ 7, which provides in relevant part:

> [Humberson] hereby irrevocably constitutes and appoints [Intrepid] in connection with all Securities which compromise the Collateral, whether or not the Securities have been transferred into the name of [Humberson] or its nominee, as [Humberson]'s proxy . . . with full power, solely upon the occurrence and during the continuance of an Event of Default and the exercise of [Intrepid]'s rights under this Section 7, to:
>
> a) attend all meetings of Securities holders of [Interlink] held after the date of this agreement and to vote the Securities at those meetings in such manner as [Intrepid] shall in its sole discretion deem appropriate, including without limitation, in favor of liquidation of [Interlink];
> b) to consent in the sole discretion of [Intrepid] to any action by or concerning [Interlink] for which the consent of the Securities holders of [Interlink] is or may be necessary or appropriate; and
> c) without limitation to do all things which [Humberson] could do as Security holder of Securities of [Interlink], giving to [Intrepid] full power of substitution and revocation.

Paragraph 7 is independent of ¶ 6 of the pledge agreement. As is clear from its language, ¶ 7 imposed no ten day waiting period before Intrepid was empowered to vote the Stock. Rather, pursuant to ¶ 7 of the pledge agreement, upon the event of default (Humberson's sale of the Stock to Americare), Intrepid immediately had the right to act as a proxy and vote the Stock as it saw fit. Given the independence of the two provisions, the court sees no reason to subordinate ¶ 7 to the limitations imposed on Intrepid's remedies in ¶ 6.

Next assuming, *arguendo*, ¶ 7 were subordinate to ¶ 6, the Motion is still without merit. Paragraph 6 does not provide that ten day's written notice is the exclusive form of reasonable notice of an event of default. Rather, it merely states what Humberson agreed will constitute reasonable notice in all cases when notice is required. Accordingly, "reasonable notice" for purposes of the pledge agreement might be comprised of any sequence of events that adequately disclosed the existence of an event of default. Here, Humberson certainly had notice of the sale of the Stock. Further, he was aware of and in possession of copies of the loan and pledge agreements, and should have been cognizant of the restrictions contained therein. Accordingly, Humberson had "reasonable notice" of the event of default caused by Humberson's sale of the Stock to Americare.

Finally, as set forth in ¶ 7, the pledge agreement contemplated the granting of a very broad proxy power to Intrepid's predecessor and, consequently, Intrepid. In particular, during the continuation of an event of default, Intrepid was empowered to act in any manner it saw fit in voting the Stock and consenting to actions. In short, Intrepid was empowered to act for Humberson for all purposes.[3] As Intrepid could do that which Humberson could have done had he retained control of the Stock, Intrepid, just as would have been true of Humberson, could act at a meeting, consent to action, or waive any notice it might otherwise have been required to give. Since the Stock represented all of the issued stock of Interlink, Intrepid, through the proxy, could do as it saw fit as the authorized agent of the sole shareholder of the corporation.

---

[3] *Cf Official Comm Of Unsecured Creditors v. Fleet Retail Fin. Group*, 274 B.R. 71, 92-93 (D Del. 2002) ("person acting as proxy for another is but the latter's agent . . .), *Gross v. Curtis Publishing Co* , 1975 U S Dist. LEXIS 13243, *14 (S.D.N.Y. 1975) (person designated as a proxy is an agent for the person whose vote he casts) *Accord Gray v Aspironal Laboratories*, 24 F.2d 97, 98 (5th Cir. 1928) (notice to proxy must be treated as notice to principal)

II. Conclusion

Humberson has failed to raise any issue not already considered by the court before issuing the Findings and the Judgment. Accordingly, the Motion is DENIED.

It is so ORDERED.

Signed this the _____ day of December 2002.

DENNIS MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE